

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Myrtle S. Hatcher, f/k/a)	AWG Docket No. 11-0319
)	
Myrtle S. Roland,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held as scheduled on August 31, 2011. Ms. Myrtle S. Hatcher, formerly known as Myrtle S. Carter Roland (“Petitioner Hatcher”), participated, representing herself (appeared *pro se*).

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Hatcher owes to USDA Rural Development a balance of **\$16,323.91** in repayment of two United States Department of Agriculture Farmers Home Administration loans made in 1991, for a home in Louisiana. The balance is now unsecured (“the debt”), and is calculated as of July 28, 2011. *See* USDA Rural Development Exhibits, esp. RX 6, pp. 1, 2, plus Narrative, Witness & Exhibit List (filed August 12, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$16,323.91** would increase the current balance by \$4,897.17, to \$21,221.08. [This includes both loans.] *See* USDA Rural Development Exhibits, esp. RX 6, pp. 1, 2.

5. The amount Petitioner Hatcher (then Roland) borrowed in 1991 was \$31,360.00 (\$22,000.00 on one loan, \$9,360.00 on the other loan). By the time of the short sale (to Leavines Properties) in 1999, the debt had grown to \$31,568.95:

\$ 29,831.18	Principal Balance prior to short sale (both loans)
<u>\$ 1,737.77</u>	Interest Balance prior to short sale (both loans)
 \$ 31,568.95	 Total Amount Due prior to short sale (both loans)
<u>=====</u>	
- <u>\$ 8,200.00</u>	Proceeds from short sale
 \$ 23,368.95	 Unpaid after short sale in 1999

RX 5 and USDA Rural Development Narrative.

6. Petitioner Hatcher's testimony is admitted into evidence. Petitioner Hatcher testified that she took care to keep the USDA Rural Development debt current, and that her payments were current when she moved out and delivered the keys to USDA Rural Development. I agree with Petitioner Hatcher that she acted responsibly under the circumstances she described. Nevertheless, a significant amount of interest did accrue before the short sale happened. Also, the large amount of debt remaining after the short sale can be attributed also to the sale price (\$8,200.00) Petitioner Hatcher received from Leavines Properties.

7. Since the short sale, no additional interest has accrued, and another \$7,045.04 has been applied toward paying the debt, taken from monies due to Petitioner Hatcher such as Federal income tax refunds, Social Security payments, and other payments, leaving **\$16,323.91** unpaid now (excluding the potential remaining collection fees). *See* RX 5, and USDA Rural Development Narrative. The last collection shown was in 2009. RX 5, p. 3. Petitioner Hatcher's Social Security payments have apparently not been *offset* since 2009.

8. Petitioner Hatcher filed a completed "Consumer Debtor Financial Statement" on August 22, 2011, which is admitted into evidence. Petitioner Hatcher's part-time job as a direct care worker requires her to be on-call, to respond to people's needs such as being bathed at home. The amount of money she makes is too small to be garnished. [**Petitioner**

Hatcher should not be garnished when her disposable pay is \$217.50 per week or less.]¹

USDA Rural Development does not garnish in violation of 29 C.F.R. § 870.10, where disposable pay does not exceed “an amount equivalent to thirty times the minimum (hourly) wage” for a week, currently \$217.50 per week (30 x \$7.25).

9. Petitioner Hatcher’s reasonable and necessary living expenses consume her part-time pay plus her Social Security payments plus other sources of income, including her husband’s. No amount of Petitioner Hatcher’s disposable pay could be garnished without creating hardship. 31 C.F.R. § 285.11. (Disposable pay is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.)

10. Petitioner Hatcher did not have with her during the hearing, the USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List. So, Petitioner Hatcher, if you want explanation of those documents, after you have studied them with this Decision at hand, you may request a follow-up telephone conference with Ms. Kimball and me. To do so, you would contact Legal Secretary Marilyn (“Nita”) Kennedy, whose phone is **202-720-8423**, and whose fax is **202-720-8424**, and whose e-mail address is Marilyn.Kennedy@dm.usda.gov [the “dm” stands for Departmental Management].

11. Petitioner Hatcher is responsible and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

12. **Petitioner Hatcher, you may choose to call Treasury’s collection agency** to negotiate the repayment of the debt. If a portion of your Social Security retirement payments is taken again, you may choose to ask that a **smaller amount** of your Social Security retirement payments be *offset* (taken). Petitioner Hatcher, you may choose to offer to Treasury’s collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less. Petitioner Hatcher, this will require **you** to telephone Treasury’s collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**.

¹ The regulation at 31 C.F.R. § 285.11 includes the following restriction on garnishment: “The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay (for that week) exceeds an amount equivalent to thirty times the minimum (hourly) wage. See 29 CFR 870.10.”

Findings, Analysis and Conclusions

13. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Hatcher and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
14. Petitioner Hatcher owes the debt described in paragraphs 3, 4, 5, 6 and 7.
15. **No garnishment is authorized.** 31 C.F.R. § 285.11.
16. Repayment of the debt may occur through *offset* of Petitioner Hatcher's **income tax refunds** or other **Federal monies** payable to the order of Ms. Hatcher. [Petitioner Hatcher, if you file a joint tax return and a part of the refund belongs to your husband, call the Treasury toll-free number to inquire about the "injured spouse." See paragraph 12.]

Order

17. Until the debt is repaid, Petitioner Hatcher shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in her mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).
18. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 2nd day of September 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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